

1707

A N
A N S W E R
T O
O B S E R V A T I O N S
O N A
S P E E C H,

Delivered the 26th Day of December, 1769,

I N T H E
H O U S E o f L O R D S,

I N
I R E L A N D *London*

W I T H A N
A P P E N D I X,

Containing the OPINIONS of the JUDGES
of *England* and *Ireland*, on the Subject.

By a MEMBER of the House of COMMONS.

The SECOND EDITION, with ADDITIONS.

D U B L I N:

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A N S W E R
T O
O B S E R V A T I O N S
O N A
S P E E C H, &c.

AS the public are in danger of being misled in their judgments, by a pamphlet, intititled, "Observations on a Speech delivered in the House of Lords of Ireland," and as that pamphlet seems rather calculated to inflame than to instruct, to disguise the question rather than to elucidate it, I shall, therefore, first state the plain matter of fact, and then offer some remarks, to the candid and unprejudiced, on this gentleman's reasoning.

IN pursuance of this I shall prove, I think pretty clearly, that the reasons assigned for pro-

roguing the parliament were just and necessary, founded in law, and established by precedent.

By an Act, passed the 10th of Henry VII,
 it is enacted, " that no parliament should be
 " holden in Ireland, until such time as the Lord
 " Lieutenant and Council had first certified
 " unto His Majesty, under the great seal of
 " Ireland, the causes and considerations of all
 " such acts as to them seemeth should pass in
 " the same parliament, and such causes, con-
 " siderations and acts, confirmed by the King
 " and his Council, to be good and expedient
 " for that land, and his licence thereupon, as
 " well in affirmation of the said causes and acts,
 " as to summon the said parliament, under his
 " great seal of England had and obtained, that
 " done, a parliament to be holden, and if any
 " parliament be holden in this land hereafter,
 " contrary to the form and provision aforesaid,
 " it be deemed void and of none effect in the
 " law."

THIS statute was afterwards confirmed and expounded, by an act passed in the 3d and 4th of Philip and Mary, only with this alteration, that the following clause was added, to soften the rigour of it, " And forasmuch as many events and occasions may happen during the time of the parliament, the which shall be thought meet and necessary to be provided for, and yet at or before the summoning of the parliament was not thought nor agreed upon, therefore be it enacted and established, by authority of this parliament, that the Lieutenant and Council, shall and may certify

“ tify all such other causes, tenors, provisions,
“ and ordinances, as they shall then further
“ think good to be enacted and established.”

Now, from a bare inspection of these acts, it is evident, to any man of common sense, as well as to the ablest lawyer, that the author of the Observations has either misunderstood their meaning, or has wilfully misconstrued them. To support my assertion, and to set this matter in the clearest light; the first act passed in the reign of Henry VII. on this Subject, positively enacts, that all bills, whatsoever, which were to be passed that session, should be certified, previous to the meeting of parliament; consequently every subsidy act, (now termed a money bill) must have always taken its rise in the Council, or else it could not have been passed at all. The first part of the act of Philip and Mary was merely explanatory. The subsequent clause only takes off that restriction, whereby the Commons were totally precluded from bringing in any heads of bills, which had not been certified by the Council, previous to their meeting. Hence it clearly follows, that the meaning and intention of this law, was only to allow the commons the privilege of having such acts certified by the Council, which might occasionally appear necessary for the good of the nation, the necessity of which could not have been foreseen before their being assembled. But the bill of supplies, for the necessary support of government, must have been always foreseen, as being the immediate and essential cause for assembling a parliament. —— I call it the essential

tial cause, since without those supplies, no department in the state could be supported.

HAVING now given my sentiments of this matter, I shall next consider whether the *learned Gentleman* has discussed this subject with impartiality and candour. " As a consideration, " says he, or cause of summoning the present parliament of Ireland, the Privy Council had certified to His Majesty, and His Majesty had transmitted under the great seal of Great-Britain, a bill intitled an act for granting to His Majesty, the several duties, rates, impositions, and taxes, therein particularly expressed, to be applied to the payment of the interest of the sums therein provided for, and to urge the discharge of the said principal sums, in such manner as is therein directed. This bill was once read, and as the purpose of it was to continue the duties therein expressed, only for three months, from the 25th of December 1769, to the 25th of March 1770, and the Commons were preparing to continue the said duties, for two years: When a motion was made, and the question put, that the bill be read a second time. The Commons then voted, that the bill be rejected. — And immediately afterwards resolved, that the bill was rejected, because it did not take its rise in their house.

THIS, I allow, to be a true state of the question. And for this proceeding of the House of Commons, His Excellency the Lord Lieutenant, by command of His Majesty, did prorogue them. The reasons which his Excellency assigned

assigned in his speech, for this prorogation, are, that this vote of the house, and this resolution, are contrary first to the 10th of Henry VII. and the 3d and 4th of Philip and Mary, secondly, to the usage and practice ever since, and thirdly, that they entrench upon the just rights of His Majesty and the crown of Great-Britain, to transmit such bills to be treated of and considered here in parliament.

THE observer having thus stated the charge, I shall now examine the reasons he advances to invalidate it. After quoting the statute of Henry VII. (which I have already recited) he thus argues, " By this law a considerable change was made in the constitution of Ireland ; by the letter of the law, a right of propounding acts and ordinances, was vested in the King's Lieutenant and Council of Ireland, and no parliament could be convened, till these were affirmed by the King and His Council of England, as good and expedient acts for this kingdom. This is a restrictive law, but can it operate farther than the express restriction. Suppose a parliament convened under this law, what power remains to them ? To *deliberate*, and to affirm or reject. In the words of the noble lord's speech, to *treat of and consider* the matters propounded. This right is not taken away by the letter or spirit of the law, and no construction can take it away. Construction shall not affect the rights of the meanest individual, much less rob a nation of its privileges. This law does not say, that when a parliament is convened, after the form aforesaid, they must of necessity approve and " ratify

“ ratify what is transmitted to them: had it
 “ gone so far, it would have been a transfer
 “ of the whole legislative power, and parlia-
 “ ments would have been only the registers of
 “ the King and his Councils. If the right of
 “ rejecting is not taken away by that law, the
 “ vote of the Commons is not contrary to that
 “ law.”

The sophistry of this reasoning is very obvious. The privilege of the House of Commons to affirm or reject, was never disputed, nor was any censure passed on their proceedings upon that account. His Excellency charges them with having acted contrary to the statute of the 40th of Henry VII. which expressly declares, that every bill should first take its rise in the Council, and be certified by them, before it is offered to the Commons. Yet their vote and resolution, declaring that the said bill was rejected, only because it did not take its rise in their house, was a direct infringement of that statute, which enjoins it in such explicit terms: In other words, it was plainly saying, “ We reject this bill, because it took its rise in the Council, although agreeable to the laws of our land and the constitution of our country.” The House of Commons have an undoubted right to pass a negative on any bill, but this vote and resolution of theirs had a further tendency, as it aimed at depriving the King of a just prerogative, vested in him, by the authority of the whole legislature. Hence it clearly follows, that any attempt to form a precedent whereby that statute of Henry VII. might be brought into disuse, is contrary

trary to the letter of that law and the spirit of our constitution.

THE subtlety of this learned gentleman's argument, may perhaps gain him credit at the bar, but I really think it will hardly advance his reputation as an author: For the conclusion which he draws from his premisses, is equally weak and sophistical, 'if, says he, the right of rejecting be not taken away by that law, the vote of the Commons is not contrary to that law.' That is to say, if the right of rejecting be not taken away from the Commons, by the act of Henry VII. then their vote and resolution in manifest contradiction to that statute, *is not contrary to that statute.* Surely, a negative power in any one part of the legislative body, does not imply a positive power over another branch of it; nor can it intitle them to exclude by a vote, another branch of the legislature, from such a privilege as the law has already conferred upon it.

AFTER quoting the statute of Philip and Mary, the observer says, "Thus far the statute is expository, and take it in it's fullest latitude; a parliament is summoned to consider certain acts returned under the great seal of England, and those only: But does the law say, the parliament *must* agree to them? Does it say, they are summoned only to record the will of others, not to declare their own? If they have no power to reject, why are they called at all? Surely not to bear testimony to their slavery. If notwithstanding this exposi-

tion,

“
tion, they have a right to reject, the vote is
“ not contrary to this part of the law.”

I AM sorry that this gentleman's repetition obliges me to use tautology. — “ The first part of the statute of Philip and Mary, he says, is only expository,” but the third clause of it is the enacting part, and explanatory of itself. The observer has quoted *only* such a part of this enacting clause, as would answer his purpose, and has omitted this very material article. “ And for as much as many evils and occasions may happen during the time of parliament, the which shall be thought meet and necessary to be provided for, and yet at or before the summoning a parliament was not thought or agreed upon, &c.” — Therefore, a further licence is granted by this mollifying clause, that bills might be certified by the Lieutenant and Council after the meeting of parliament, which before was contrary to law, under the statute of Henry VII.

No clause in any statute takes away the power of *rejecting* from the Commons, or from any branch of the legislature, and the inference which the observer draws is totally groundless. The House of Lords may with equal justice reject a bill, which has taken it's rise in the House of Commons, and assign it as a reason, that they reject that bill *only* because it took its rise in that House. They might equally say, “ are we summoned only to record the will of others, not to declare our own? And by this manner of *rejecting*, we should never have any bill passed.” The observer then recurs to his old

old sophistry, and draws this false conclusion, that the power of rejecting, gives the Commons an absolute power over the other branches of the legislature.

The observer next says, " that from the time that the law of Philip and Mary was enacted, the necessity of certifying money bills to England previous to the meeting of the session, absolutely ceased. If any were certified before, it was because they were considered as included in general words, to which there was no exception. But by this law, the Commons regained a part of their antient right, and have ever since, during the session of parliament, propounded not only money bills, but other ordinances, though in a new form; their propositions, from that time assumed, and still retain the name of *heads of bills*, and differ from bills, only in the trifling form, of *praying it may be enacted*, instead of saying, *be it enacted*. To me it is matter of wonder, that the Commons, from that day, ever passed a money bill that had its origin any where but in their own House. All necessity of taking its rise in the Council was at an end. The right of taxing by virtue of representation is not to be questioned."

HERE is casuistry, excusable only in a gentleman of the profession. For though the *absolute necessity* of certifying money bills to England, previous to the session, ceased by the act of Philip and Mary, does it therefore follow, that the power of the Council to certify money bills

previous to the session also ceased? Does this statute say, be it enacted, that for the future, no money bills shall be certified previous to the meeting of parliament, and that no money bill shall ever take it's rise any where but in the House of Commons?—No! Not a word tending to this purpose can be found in that, or in any other statute whatsoever. So, I cannot see in what respect the power of the Commons was enlarged by that act, except in this single point, that whereas they were precluded by the former one, from proceeding on any bill that had not been previously certified; they are now enabled to bring in *heads of a bill*, for such laws, as shall seem expedient to them for the good of the nation.

WHAT the observer is pleased to call a trifling form, in the difference between the two phrases, of *praying it may be enacted*, instead of saying, *be it enacted*, in my opinion, includes a most material distinction. The one implies a request to another power to have a bill passed; the other is expressive of an independent authority.

THIS writer quotes the words of a subsidy act passed in the 3d and 4th years of the reign of Philip and Mary, to prove the right of the Commons in virtue of representation. Here he seems to take unnecessary pains to prove a point that was never contested. If he means to insinuate, that this right is infringed, when a money bill is originated in the Council, he is grossly mistaken. For though it be framed there, it can be of no efficacy, until it receives the sanction of the Commons. Consequently, they may still with the utmost propriety use this stile.

“ The

“ The King and Queen’s most humble, faithful, loving and obedient subjects, the Commons in this present parliament assembled, do, for themselves, and all the whole body of the realm, whom they do represent, freely, liberally, most lovingly and benevolently, give and grant unto the King a subsidy.”

The right of *giving*, still remains vested in the Commons, equally as if the bill had absolutely taken its rise in their own House. Then, as the right remains the same, of what consequence is it to the Commons in particular, or to the nation in general, from whence a money bill derives its origin?

The author of the Observations proceeds, “ Since the 10th of Henry VII, many new parliaments were called, without any subsidy or money bill, being certified to England, or transmitted under the great seal to Ireland. “ In the 15th of Henry VII, five years after the law of Poyning, a parliament was called, and one act only passed; it was indeed a subsidy act, but it does not appear, that it was certified by the Council of Ireland, or transmitted by the crown of England, &c.”

THIS is a manifest contradiction of what he alledges in page the ninth. He there says, (after quoting the statute of Henry VII) “ By this law a considerable change was made in the constitution of Ireland; by the letter of the law, a right of propounding acts and ordinances was vested in the King’s Lieutenant and Council of Ireland, and no parliament could be convened, ‘till these were affirmed by the

*"the King and His Council of England, as good
" and expedient acts for this kingdom."* Here the
observer is inconsistent with himself, for he first
acknowledges, that from the statute of Henry
VII, to that of Philip and Mary, every bill must
have been certified, previous to the meeting of
parliament. Yet he now affirms, that a subsidy
bill was passed in the reign of Henry VII, *without being thus certified*, five years after that ve-
ry statute was enacted. Surely, his own reason-
ing might have convinced him, that where *only*
one bill was passed, during that session, it must
have been certified pursuant to the statute, as
that alone could have been assigned as the
cause and consideration of summoning that par-
liament.

I THINK I have said enough to convince the
candid reader, that this gentleman's *Observa-
tions*, on his Excellency's Speech, are neither
supported by law, nor argument. He is equal-
ly unsupported by *usage and practice*.

NOTHING explicit appears on the Journals
of the House of Commons, to shew that this
usage and practice were ever discontinued.
From the 10th of Henry VII, to the 3d and
4th of Philip and Mary, this statute could not
possibly have been dispensed with, on any ac-
count whatsoever, as I have already proved,
and as the observer himself is forced to acknow-
ledge. From that period, to the reign of Wil-
liam III, the silence of the Journals on that
point, are a tacit acknowledgment, that the
House of Commons in *those days*, never dispu-
ted

ted the right of the King and Council, to certify a money bill.

THIS writer, page 17, confesses the uninterrupted usage to pass such bills, ever since the year 1695. Now, as the constitution was never fixed on a firm basis, nor the rights of the people, nor the prerogative of the crown accurately ascertained, before the glorious revolution; of course, precedents since that time, must have greater weight, than if deduced from any former period.

“ THE only offence, says the observer, given by the Commons, is founded in their benevolence, in their desire to maintain their antient right of giving, which right all their gifts are evidence of, upon the highest records.” This is a mere sophism, for their offence *was not founded in their benevolence*, but in their desire of introducing a new mode of giving, contrary to their own practice, as well as to acts of the whole legislature.

He next most invidiously insinuates, “ That for this offence the parliament is prorogued, before time is given to devote one week, to the wants and necessities of the people.” In answer to that, I shall beg leave to ask this gentleman, whether granting the supplies is not providing for the wants and necessities of the people? Are not those supplies granted and applied for the service of the nation?

AND

AND here I think it proper to clear up a point, wherein many people are apt to be mistaken. Some *party* writers are very fond of making an artful distinction between the *exigencies* of government, and the wants of the people. Whereas, it is really a *distinction* without a *difference*. For if the supplies are essential to the support and defence of the kingdom, are not therefore, *the exigencies of government, the wants of the people?* They are called the *exigencies of government*, only because the application of all sums granted by the legislature, is left by law to the executive power. They are to be appropriated by that power to the different purposes for which they were granted; by this means, the King becomes the royal trustee of the public. He might as well term the money granted by a grand-jury (for making a new high-road) a supply for the use of the crown, because it is called the KING's high road.

It was but reasonable, that the crown should shew some marks of displeasure, for so manifest an encroachment on it's prerogative. Yet this measure was wisely delayed, until such time, as but very few inconveniences could result to the subject by a prorogation. He himself allows, that *the great exigencies of government were provided for.* I then say, that but few inconveniences could arise to the subject, from the prorogation, because *the sums of money voted by parliament for public and useful works, may still be ap-*

applied by his Majesty's letter, to the purposes for which they were intended: And we have the strongest reasons to believe, that His Majesty from his known paternal affection to his loyal people of Ireland, will not let them suffer, for the conduct of their representatives.

I ONLY say this, on a supposition, that the present parliament may be further prorogued; yet I still hope, (and I am sure it should be the aim of every honest man) that means may be found to conciliate matters, in such a manner, that union and harmony may be once more established between the different branches of the legislature. All jealousies and animosities would instantly subside, if people were once convinced of this truth, that it is equally requisite for the good of the WHOLE, to maintain and assert the just and legal prerogatives of the crown, as well as the rights and liberties of the subject.

It may, indeed, be a political stroke in the observer, to encourage his associates to persevere in their opposition, "as they may hope for every thing from the embarrassed state of affairs in Great Britain." This is a sample of modern patriotism! Yet, what should we think of that man, who would advise us to throw a firebrand into our neighbour's house, because it was already in a blaze. But I have long observed, that *the assertors of the rights and liberties of their country, do most cordially promote confusion and anarchy, as the readiest means to attain their own sordid and selfish ends.* They

act with as much wisdom and humanity, as the mad-man who set a house on fire, and apologized for it, by saying, he could not otherwise roast his eggs!

I HAVE thus endeavoured, *in a plain and simple stile*, to make every reader thoroughly acquainted with this subject, for I do not affect the elegant phrases which set off this learned gentleman's arguments. He stands on the "*broad bottom of representation*," and to use his own expression, "*to me it is no matter of wonder*," that a gentleman so celebrated for the powers of theatrical declamation, should receive such *plaudits* from the public. Above all I admire his artfully introducing the long since forgotten subject of augmentation, though quite foreign to the purpose. His design, no doubt, was to remind us of his eloquent harangues on that topic, which otherwise might have been forgotten. "*He opposed it, he says, because it then appeared to him, by a species of stealth, to furnish a bold and hardy minister with three thousand two hundred and thirty-five disciplined troops, to be employed in the suburbs of London, or the forests of America.*" Undoubtedly, this elegant phrase of *a species of stealth*, alludes to that celebrated manœuvre of one of the Kings of Brentford, by which he conveyed his army *in disguise* to Knight's-bridge, which is really in the *suburbs of London*. At the same time, I am fully sensible of his malignant insinuation, yet I think it only deserves to be treated with contempt and ridicule. Had I unravelled this old stocking at the

the toe, (as the author of the Tale of a Tub says) that is, had I begun to read this pamphlet at the end, I might have saved myself the trouble of answering it. For, as the purport of it, was to shew the impropriety of the late prorogation, I should have found that the author has given a conclusive reason in favour of it: "he says, I do not contest the right of the crown, to prorogue and dissolve; the King hath a prerogative in all things, that are not injurious to the subject; but the King's prerogative stretches not to the doing of any wrong." Now, the best way of investigating the tendency of an argument, is to form this argument into a syllogism, which if we do, it will stand thus,

*The King hath a right to prorogue and dissolve
the parliament;*

But the King's prerogative stretches not to the doing of any wrong: for although he may do what he will, yet he will not do what is injurious to his subjects, and will not do what is illegal, and will not do what is inconsistent with his duty. **Therefore,** such is the

The proroguing or dissolving the parliament, is not doing any wrong.

I do not suppose that the observer was aware, how this *argumentum ad hominem*, might be turned upon him; and I should use the *argumentum ad verecundiam*, if I thought it would have the same effect.

THE picture which he gives us of this *desolated metropolis*, is indeed melancholy; and I believe that some of our most zealous patriots, are under as dreadful apprehensions of a Dissolution, as they were of the return of the Octennial Bill. I cannot help admiring this gentleman's sagacity, in finding out, that where *there is no commerce, trade must sink, and credit expire*. But I have not so poor an opinion of the trade and affluence of this great city, as to suppose that the absence of a few members of parliament, for a short time, can bring on that *desolation* he speaks of.

"With the most sincere affection for my sovereign, with the greatest confidence in his wisdom, and reliance on his virtues, and with great respect for the noble lord who represents those virtues, I most ardently long to see," our celebrated patriots act with consistency, and manifest a real love for their country: By which they might gain the affections and confidence of their constituents. I could also wish to see them, "not desirous to encrease their power" by an unreasonable opposition, (instigated by a few aspiring men "at the expence" of the laws and constitution) of their country.

of Money Bill. Given the King
Court of Commoners to the King
and the King to the Court of Commoners
of Money Bill.

A P P E N D I X.

AFTER perusing the opinions of the English and Irish Judges, which I had not an opportunity of seeing before the publishing of this edition; I have discovered another sophism in the observer. "In 1692," says he, "the Commons resolved, that it was, and is the sole and undoubted right of the Commons, to prepare *heads* of *bills*, and strictly and literally all *heads* of *bills* are prepared in one or the other of the two Houses of parliament, *heads* of *money bills* particularly in the House of Commons. This resolution was referred to eight judges, and they reported their opinion upon it: But allow me to say, that the Commons in 1769, entered into no such resolution.

THOUGH they did not enter into such a resolution, in express terms, as the Commons did in 1692, yet they did it *virtually*, by refusing to pass the money bill, because it did not take its rise in their House: Was not this publicly declaring, that it belonged to the Commons to originate every money bill, which was the very resolution of the House in 1692.

The Opinion of all the Judges of England,
 about the sole and undoubted right of the
 Commons of Ireland, to prepare Heads
 of Money Bills.—Given the King,
 June 22, 1693.

IN obedience to your Majesty's commands, signified by the Right Hon. the Lord Keeper of your Great Seal of England, requiring us to consider an act of parliament made in Ireland, 10th H. VII. intituled an act, that no parliament be holden in this land, until the acts be certified into England, and an act of parliament made there, 3d and 4th Phil. and Mary, intituled an act how Poynings law shall be expounded and taken, and thereupon certifie to your Majesty our opinions in writing under our hands in the particulars following,

1st. WHETHER it is the sole and undoubted right of the Commons of Ireland in parliament assembled, to prepare heads of bills for raising money.

2d. WHETHER the Lord Lieutenant and Council, may not prepare and certify bills for raising money to their Majesties and Council of England, to be returned under the Great Seal of England, and afterwards sent to the Commons, unleis the heads of such bills have first their rise in that House.

We have met together and considered the same, and we are thereupon of opinion,

1st, THAT it is not the sole and undoubted right of the Commons of Ireland in parliament assembled, to prepare heads of bills for raising money.

2d, THAT the Lord Lieutenant and Council, may prepare and certify bills for raising money to your Majesty and Council of England, to be returned under the Great Seal of England, and afterwards sent to the Commons; albeit the heads of such bills have not first their rise in that House.

J. Holt, Ch. Jus. B. R.

G. Treby, Ch. Jus. C. R.

R. Atkins, Ch. B.

W. Dolben in B. R.

W. Gregorie in B. R.

E. Nevil in C. B.

J. Powell in C. B.

W. Letchmore, B. in Exc.

G. Eyre, Jus. B. R.

T. Rokeby, C. B.

J. Surton, B. in Exc.

J. Powell, B. in Exc.

The

The Opinion of the Judges of Ireland, upon the Acts of 10th Henry VII. and 3d and 4th Phil. and Mary.

May it please your Excellency, and Lordships,

In obedience to your Excellency's order of reference to us, we considered the act of 10th Henry VII. Cap. 4. commonly called Poynings law: and the act of 3d and 4th Phil. and Mary, Cap. 4th, and the other acts relating to the holding Parliaments, and passing of Bills in Parliament in this Kingdom of Ireland:—And we humbly offer unto your Excellency and Lordships, that by the said act of the 10th of Henry the VII. Cap. 4th, it is provided,

“ That no Parliament be holden in *Ireland*,
 “ but at such time as the King’s Lieutenant
 “ and Council there do first certify the King,
 “ under the Great Seal of that land, the causes
 “ and consideration of all such acts as them
 “ seemeth should pass in the same Parliament,
 “ and such causes, considerations and acts af-
 “ firmed by the King and Council to be good
 “ and expedient for the land, and his licence
 “ thereupon, as well in affirmation of the said
 “ causes and acts, as to summon the said Par-
 “ liament, &c. That done, a Parliament to be
 “ held, &c.” “ And any Parliament to be
 “ holden hereafter contrary to the Form and
 “ Provision aforesaid, to be deemed void and
 “ of none effect in law.”

By

By which act we conceive, that any former right which either House of Parliament might have to prepare bills is thereby concluded, and the power of preparing bills is in the Chief Governor and Council, the words of the act being general, and in the affirmative, that all acts passed in Parliament should, before the Parliament begun, be certified into England, and approved of there, and remitted back; and then comes the negative clause, that Parliaments holden contrary to that form to be void—so that until the act of 3d and 4th Phil. and Mary, there could be no new certificate or transmission of any more bills after the Parliament sat, as may appear by the letter of that act, which was made chiefly to remedy what inconvenience; and by the resolution of the Judges in *England* upon the said acts, and by the recital in the act of 11th Eliz. Sess. 2. Cap. 1. that by occasion of *Poynings* law, no establishment or provisions can be concluded by the body of Your Majesty's Parliament being assembled, but such only as have been before their assembly certified unto Your Highness, and affirmed by the same; and by the words of the act of 11th Eliz. Sess. 3. Cap. 8. that *Poynings* law prohibited any Parliament to be summoned, or any act to be treated of in Parliament, before the acts were certified under the Great Seal of Ireland, and returned under the Great Seal of England.—And we humbly conceive, that money bills, as well as other bills, even those of grace and indemnity are within this law of the 10th of Henry the VIII, and therefore the Parliament in the 28th of Henry

the VIII. Cap. 4 did suspend that law for a time, as to acts concerning the King's revenue, and the public good, but that being in the populous, they made another act the same Session, Cap. 20th in the disjunctive, suspending Poyning's act as to all Statutes of the Parliament, that should concern the public good, or the encrease of the King's revenue: And in like manner by another Eliz. Cap. 17. Poyning's act is again suspended for that time, as to acts concerning the establishment of public policy, quiet or meed of the subjects, or augmentation of His Majesty's revenue, &c. which great care and circumspection to suspend Poyning's act, as to bills of any augmentation of the revenue, had been altogether needless, if money bills, as well as others had not been bound by that act, or had been set at large by the Statute of 3d and 4th Phil. and Mary, by which it is enacted, to be set at large all
 Add we conceive, if it were otherwise in Money Bills, the Commons in Parliament would have the right, not only to prepare Bills, but also to prepare the Bills themselves; for if Money Bills are not within the said acts, they are but to be certified or transmited at all, the contrary whereof has been constantly practised ever since Poyning's law, and seems to us, that all the Commons in Parliament, had the sole right of preparing Heads, &c. they should also have a right of having those Heads pursued and observed. But it is manifest, that before what change and alteration the Chief Governor and Council may make of them here, it is expressly provided, by the Statute of 3d and 4th Philip and Mary, that the King's Council

Council of England, may change and alter any Bills that may be transmitted to them there. Secondly, we humbly conceive, that the design of the said act, of the 3d and 4th Philip and Mary, was chiefly to explain and regulate the said act of the 10th of Henry VII. in the particulars following:—

1st. To comprehend every Chief Government (whatsoever his title were) within the reach of the King's Lieutenant. 2dly, To impower the King and Council of England to amend, alter and change such Bills as should be transmitted.

3dly, To impower the Chief Goverour and
Council here, to certify Bills after the Parlia-
ment begun. o 90 .lly ymst Henry viii in obam
III Mordy Blll a saw 100this Fustis 100th in bollsq
And we humbly conceive this act does en-
large the power of the Chief Goverours and
Council, but does not give or restore any thing
to the Commons; for it is as general and com-
prehensive as Poyning's Law, impowering the
Chief Goverour and Council to certify all such
other bills, as they shall think good to be ena-
cted in the same Parliament, and the same being
returned under the Great Seal of England, no
others may be enacted, and so that the dif-
ference in the point between Poyning's Law, and
this act is, that the former impowers the King's
Lieutenants and Council, to transmit Bills before
the Parliament sas, and the latter impowers
them likewise, to certify Bills pendente Parlia-
mento, for scilicet they must do it, and adds a
to D 2 negative

negative clause; but no other Bills but what they certify, (therefore not Money Bills) can be treated of in Parliament.

And it seems to us, that this Law of the 10th Henry VII. cap. 4, has been of great consequence and security to the English interest in this Kingdom, in the judgment of former times, such great respect having been given to it, and such great care having been taken of the preservation thereof, that it is the only act, the repeal whereof cannot be certified into England by the Chief Governor and Council, without a previous consent of the majority of both Houses of Parliament, as by the Statute 11th Elizabeth, cap. 8, may appear.

And we find by the printed Statute made in the 15th Henry VII. the only Bill that passed in that Parliament, was a Money Bill which could not be transmitted, but before the Parliament sat, and therefore the Heads of it could not be prepared in the House.

In the like manner, we find a Subsidy granted 3d and 4th Philip and Mary, cap. 6, which as the law was then held, must be transmitted before the Sessions, and another Subsidy granted 11th Elizabeth, which being the first act of that Parliament, the Heads of it could not be prepared in the House.

We have also inspected the Journals of Parliament, of which we find none more ancient than those of King James I. and by them it appears, that in the year 1604, there is a grant

of four Subsidies to King James, and by comparing the transcript with the journal, which we have diligently examined, we find the transcript dated the 6th March, 10th Jac. I. which was before the Parliament began, so that the Heads of that Bill could not be prepared in the House, and yet it passed cheaffully, and they had the King's letter of thanks for the same, which is entered at large in that journal; and in the reign of King Charles I. one Bill for four subsidies was remitted hither, 13 May, with Charles I. and another Bill for subsidies, the 13th July, and both passed, though the Heads of neither of them could be prepared in the House of Commons; for the Parliament did not begin until the 14th July, and we did observe, that in the licence to call that Parliament there was a condition inserted.

Ita tamen quod, that the bill of subsidies be ready for the Royal Assent within three weeks after the beginning of that Parliament, and afterwards a fortnight more was added; another bill of subsidies being proposed, which also passed; in like manner the act of subsidies is the first act that passed in the Parliament, holden Anno 1639.

And so it was in the Reign of King Charles II. when an act of four entire subsidies, and another for the City of Dublin, to raise 25,000l. and several other Money Bills passed in the House, without any previous preparation. But it is true, in several Parliaments the Commons have prepared Bills and Heads of Bills, as well for Money as other things, but seldom for Money than other matters, as they did this session

session prepare heads or schedules of English acts, to be made of force here, and sometimes their advices have been pursued, and sometimes rejected; but this was done as remembrances, and by way of humble advice, and not in point of right, and so it is fully expressed in the journal of 1614, in these words: *they did much*

The House of Commons acknowledging
That the sole power and authority to trans-
mit such Bills into England, as are to be
proounded in Parliament, doth rest in the
Lord Deputy, do only desire to be recom-
mended unto his Lordship; and the rest
touching the acts following, which they
humbly offer as meet to be transmitted with
such other acts, as his Lordship and the rest
shall think fit, to be proounded next Session;
and afterwards, they also desire in penning
these Bills, (some of which are Money Bills,
and more nor) his Lordship would use the
service of their Committee of twelve, with
such others as his Lordship would employ;
and in the same Parliaments, they thus answer
the complaint of the Lords, viz. "where their
Lordships seem to tax the House of Com-
mons with too much forwardness, in pro-
ounding laws for the Royal Assent, without
participating with their Lordships, it is far
from the judgment of the House, so proceed
in such a manner, being instructed, and hav-
ing full knowledge how they are limited by
the laws, Statues, and orders of Parliament,
and for their proceedings in this Kingdom;
they humbly appeal to your Lordships, whe-
ther they proounded any act of Parliament
with this year as aforesaid before the 11th of Febr
1611.

“ further than to have some necessary Bills to be
 “ conferred on, by Your Lordships and the
 “ Council, and with Your approbation to be
 “ transmitted into England; that being sent
 “ over again, and considered of then to be
 “ allowed, or disallowed afterwards in Both
 “ Houses, before they can pass the Royal
 “ Assent.”

In like manner when a Committee of the Lords, with the assistance of the Judges, had prepared some very good bills, which were approved of by the House of Lords, Anno 1634, which the Lord Chancellor, on his knee, humbly moved the Lord Deputy to transmit to England, his Lordship made answer, “ That he doubted not but their Lordships should have satisfaction in the effect of their desires, but for the manner, his Lordship’s dissent is as much as their Lordships, by an act of Parliament made in the time of the government of Sir Edward Poynings, they are debafted from penning any act, and have power only to move and petition the Lord Deputy and Council for drawing and transmitting into England such acts as they desire to be passed.”

On the Matter, his Lordship assured the House of the best satisfaction he could give, and that thereat he would do the Lords what service lay in him.— His Lordship directed the Clerk to take notice of his dissent, and to cause an entry to be made of his Protest of it, and of his claim in right of the Crown to their drawing of all bills to be passed in Parliament in this Kingdom, and theretupon followed the Lord Deputy’s Protest, which recites the most material parts of the acts

acts of 10th Henry VII. cap. 4. and 2d. and
 4th Philip and Mary, cap. 4. and the titles of
 the new acts which were proposed, and con-
 cludes in these words. " Whereas the Commit-
 tee of Privileges directed the Lord Chancel-
 lor to move Us, the Lord Deputy, that divers
 acts drawn up by His Majesty's Judges of the
 several Courts, and considered of and allow-
 ed by their Lordships, might be further pro-
 ceeded in as appertaineth, which the Lord
 Chancellor did accordingly, all which former
 proceedings of their Lordships We the Lord
 Deputy taking into due consideration, and
 weighing the same with the statutes also, We
 do not conceive that the said Lords ad-
 visedly or purposely intended to violate or in-
 novate in any thing; otherwise than as by the
 said statutes are provided; yet for avoiding
 any misrepresentation which, by reason of
 that manner of proceeding, may in after-
 times be made to the intrenchments of the
 said act of Parliament, or His Majesty's
 Royal Power, whereof We are, and always
 will be, most tender, in discharge of the duty
 We owe to the preservation of His Majesty's
 Honour, and that the like mistake in their
 Lordships proceedings may futurely be a-
 voided; We have therefore thought fit this
 day, in full Parliament, to protest against
 that course held by their Lordships, as not
 any way belonging to their Lordships, to
 give order to the King's learned Council, or
 any other, for the framing and drawing up
 any acts to pass in Parliament, but that the
 same only belongs to Us the Lord Deputy,
 and We do hereby further declare, that their
 Lordships,

" Lordships have power only by Remonstrance
 " or Petition, to represent unto the Lord De-
 " puty and Council for the time being, such
 " publick considerations, as they shall think fit
 " and good for the common wealth, and to
 " submit them to be drawn into acts and trans-
 " mitted into England, or otherwise altered or
 " rejected according as the Lord Deputy and
 " Council, in their wisdom, shall judge and
 " hold expedient, and that in such wise as the
 " said acts of Parliament, in these cases, have
 " provided; and We the Lord Deputy do trust
 " their Lordships will take this as a necessary
 " and seasonable admonishment from Us, and
 " forbear the like course hereafter."

And thereupon the Lords made an order in
 these words, viz.

" That the Lords abovenamed shall forth-
 " with attend the right honourable the Lord
 " Deputy, and let his Lordship know; that the
 " Lords never intended to proceed in any thing
 " contrary to the act of Poynings; but only
 " viewed those bills which the Judges had
 " drawn, by his Lordship's direction, for the
 " better preparing that work."

And we also find, that by the Journal of the
 House of Commons, Anno 1640, amongst the
 instructions given their agents to solicit the
 King, the second article which they were to de-
 scribe was, that the Commons, during the Parlia-
 ment, may draw up bills by their own Com-
 mittee, and transmit them.

And so in the Journal of 1661, they express themselves in this manner :

“ Ordered, that the undenamed persons be appointed a Committee to attend the Lords Justices this afternoon at three o'clock, in the Council Chamber, and to join with the Committee of the House of Lords, in desiring the Lords Justices to give directions for drawing up, and transmitting into England a bill, according to such Heads as shall be proposed by both Houses for 12000 £. to be raised for defraying the expence of the agents that are to be sent into England from both Houses, and other necessary contingencies ;” by which it seems that they have claimed no Privilege in preparing Heads for Money Bills, but such as were communicable to both Houses ; and their address is by Petition, and not a Demand of right.

And, indeed, we could not find any other pretence or colour for this claim to a sole right for preparing heads of bills, &c.—But a Vote mentioned in the Journal of the year 1662, in these words, viz. “ The Lords, having a free conference with the Commons, differed from them in the manner of raising the 30,000 £. for the Duke of Ormond ; it was resolved, declared, and asserted, by this House, that the proposals of ways and means of levying all money to be raised in this kingdom, is the antient and undoubted right of this House only ;” which appears to have resulted from a conference with the Lords, and seems to relate

late only to them, and tended to assert the Rights of the Commons against the Lords to have Money Bills begin in their House first, as they do it to this day; for whereas other bills may be promiscuously sent to either House first, Money Bills ought to be and are sent first to the House of Commons.

But this Vote, as we conceive, has no reference to the Power lodged by Law in the Chief Governor and Council, nor any tendency to divest them of it, as may appear from their former Votes and Proceedings, and if it had, would have been of no force against so many statutes, and so long usage and practice to the contrary.

RICHAUD COX

And we do conceive no inconveniency can accrue to the subject, by this interpretation of the aforesaid ~~statutes~~, because the Commons having a negative vote upon Money Bills, as well as other bills, can never be burthened with any tax, which they shall think unequal or unreasonable.

Upon consideration of all which statutes, journals, transmisses, and other proceedings of Parliament, we are unanimously of opinion :

First, That it is *not* the sole right of the Commons of *Ireland*, in Parliament assembled, to prepare heads of bills for raising money.

Secondly, That the Chief Governor and Council may prepare bills for raising of money, and transmit the same to their Majesties

Majesties and the Council of England, to be returned under the Great Seal of England, and afterwards sent to the Commons, although the heads of such bills have, not their first rise in the House of Commons.

All which we humbly submit to your Excellency and Lordships, this 14th of February 1692.

RICHARD REYNELL.

RICHARD FYNE.

JOHN HELY.

RICHARD COX.

JOHN LYNDON.

HENRY ECHLINE.

JOHN JEFFERSON.

STANDISH HARSTONGE.

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